

## REVIEWS

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THE PRINCIPLES OF MODERN COMPANY LAW. By L. C. B. Gower. London: Stevens and Sons Limited, 1954. Agent for U.S.A.: The Carswell Company Limited, Toronto. Pp. xl, 599. \$7.65.

THE disclosure philosophy which the American Securities Act shares with the English Companies Act compels me to reveal my bias at the outset. The author's current year as Visiting Professor of Law at Harvard—where he has manfully pitched into one of the regular sections in Corporations in addition to giving a lively seminar in "Problems of the Management-Shareholder Relationship"—has ripened an acquaintanceship-by-correspondence into a friendship which is both professional and personal. Besides, he treated me kindly when the author-critic relationship was reversed.<sup>1</sup> Now, having made full and fair disclosure, I indignantly deny the mischievous innuendo that our relationship has affected my judgment of his book in any way.

Professor Gower's book, in comparison with the older treatises on English company law, is a breath of fresh air.<sup>2</sup> *Buckley*,<sup>3</sup> with its section-by-section commentary on the Companies Act, is a highly useful reference volume, but I daresay few people would be rash enough to call it readable. *Palmer*,<sup>4</sup> when it made its first appearance in 1898, is said to have created something of a sensation in English legal literature because of its clarity and the novelty of its treatment, but after fifty or sixty years the novelty has worn off. The even older *Gore-Browne*,<sup>5</sup> now in its forty-first edition, is a somewhat lengthier treatment along much the same lines. And, of course, there is the Companies volume of *Halsbury's Laws of England*.<sup>6</sup> Professor Gower would probably be the last to deny the usefulness of all these works, especially from the point of view of the busy lawyer who has to run down a particular problem in company law. But

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1. See Gower, *Investor Protection in the U.S.A.*, 15 MODERN L. REV. 446 (1952).

2. This is not the first example of the author's atmosphere-cleansing habit. Perhaps the most notable previous instance was a critical survey of English legal education which formed the basis of his inaugural lecture as Sir Ernest Cassel Professor of Commercial Law at the London School of Economics and Political Science. See Gower, *English Legal Training—A Critical Survey*, 13 MODERN L. REV. 137 (1950). From 1937 until he assumed his present chair in 1949, except for the war years, he practiced as a solicitor in London—an experience which is richly reflected in his book. He has also edited the current POLLOCK ON PARTNERSHIP (15th ed. 1952).

3. BUCKLEY, THE COMPANIES ACTS (12th ed. 1949).

4. PALMER, COMPANY LAW (19th ed. 1949).

5. GORE-BROWNE, HANDBOOK ON THE FORMATION, MANAGEMENT AND WINDING UP OF JOINT STOCK COMPANIES (41st ed. 1952).

6. 5 HALSBURY, LAWS OF ENGLAND (2d ed. 1932). This has been replaced by 6 HALSBURY (3d ed. 1954), but for some strange reason the later edition has not yet been released for American publication.

he has written a book that fulfills the promise flowing from the word "modern" in its title. He has produced for the first time, within the rough dimensions of a volume like the American *Ballantine*, a book that covers the whole sweep of English company law. He has brought to the subject a fresh approach, which is critical as well as expository. And he has managed to accomplish all this in an easy, informal and often witty style.<sup>7</sup>

Professor Gower has written for both the general practitioner and the student of law, economics or accounting. He states it as his aim "to supply essential background material, and to emphasise the principles of common law and equity on which this branch of the law is still based, rather than the statutory provisions which supplement and amend them in detail."<sup>8</sup> It is this approach particularly which should commend the book to the American practitioner. For the English Companies Act, like the American statutes, is not a complete code of corporation law. Bulky though it may be—in its official reprint it comes to 363 pages, including ninety-three pages of schedules—it deals mainly with details and "most of the fundamental principles of company law are nowhere enshrined in it."<sup>9</sup>

This is not to say that the English statute will seem as familiar to an American lawyer as the law of a sister state. For one thing, the English act is in many respects more flexible and less conceptualistic. Thus, the constitution of the business corporation is still regarded as essentially contractual, and hence greater freedom is allowed incorporators in providing for the division of powers between directors and shareholders, in requiring either group to act only by unanimous or qualified majority vote,<sup>10</sup> and in restricting the transferability of

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7. Thus, apropos of the new public or governmental corporations, p. 56 n.25: "Companies were produced by Victorian Liberalism out of the trust; public corporations by twentieth-century Socialism out of companies. Conservatives will take the point that the latter union is within the prohibited degrees." Or take the introduction to the chapter on promoters, p. 273: "If, in a psycho-analyst's consulting room, we were asked to say what picture formed in our minds at the mention of the expression 'company promotor' most of us would probably confess that we envisaged a character of dubious repute and antecedents who infests the commercial *demi-monde* (somehow associated in our minds with 'the curb') with a menagerie of bulls, bears, stags, and sharks as his familiars, and who, after rising to affluence by preying on the susceptibilities of a gullible public, finally retires from the scene in the blaze of a sensational suicide or Old Bailey trial." A note attached to this sentence states: "It is perhaps a tribute to the law that we definitely picture him as coming to a sticky end." I have sometimes introduced the subject of promoters to my own students by suggesting that the word is apt to produce one of two mental pictures, or perhaps a bit of both: (1) a high-pressure fellow with a checkered vest who resembles a cross between P. T. Barnum and J. P. Morgan and is probably a parasite on the nation's economy, and (2) a sort of corporate midwife who performs as essential an economic function in organizing a corporation as the investment banker does in financing it. But I have now scratched out this portion of my notes and substituted: "Read 'em Gower's description at 273."

8. P. v.

9. Pp. 8, 14.

10. This is a problem to which the New York legislature more or less grudgingly directed itself in 1948, 1949 and 1951 after a series of cases had plagued both Bench and Bar in that state. N.Y. STOCK CORP. LAW § 9; *McQuade v. Stoneham*, 263 N.Y. 323, 189

shares.<sup>11</sup> This may well account for the evolution in British law of the "private company," which is in substance an incorporated partnership. Again, the Companies Act covers two important areas that the American lawyer does not look for in the state corporation statutes: (1) the prospectus requirements for new public issues together with a few other provisions of the kind we find scattered among our SEC statutes and state blue sky laws,<sup>12</sup> and (2) the law on "winding-up" and "reconstruction" (reorganization), which we treat for the most part in our Bankruptcy Act.<sup>13</sup>

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N.E. 234 (1934); *Clark v. Dodge*, 269 N.Y. 410, 199 N.E. 641 (1936); *Benintendi v. Kenton Hotel, Inc.*, 294 N.Y. 112, 60 N.E.2d 829 (1945). *But cf.* *Katcher v. Ohsman*, 26 N.J. Super. 28, 97 A.2d 180 (Ch. 1953), where the court upheld, in apparent conflict with *Benintendi*, a by-law of a New York corporation requiring a 90% vote for all actions of directors and stockholders. In general, see Israels, *The Sacred Cow of Corporate Existence—Problems of Deadlock and Dissolution*, 19 U. CHI. L. REV. 778 (1952); Cary, *How Illinois Corporations May Enjoy Partnership Advantages: Planning for the Closely Held Firm*, 48 NW. U.L. REV. 427 (1953) and articles cited *id.* at 427 n.2.

11. Pp. 381-83; BALLANTINE, CORPORATIONS §§ 336-37 (rev. ed. 1946). Compare *Greene v. E.H. Rollins & Sons, Inc.*, 22 Del. Ch. 394, 2 A.2d 249 (1938), with *Lewis v. H.P. Hood & Sons, Inc.*, 121 N.E.2d 850 (Mass. 1954).

12. The disclosure philosophy of the Securities Act—especially the civil liability provisions of § 11—was borrowed from the Companies Act of 1929. Pp. 295-302 and c. 15; see LOSS, SECURITIES REGULATION 278-85, 295-97, 1098-1106 (1951 and 1955 Supp.). A separate statute, the Prevention of Fraud (Investments) Act, 1939, 2 & 3 GEO. 6, c. 16, has to do with fraud or "share-pushing," pp. 304-05, 309-13, 327, broker and dealer licensing, and the regulation of "unit trusts." Pp. 229-33. And England has found it necessary to preserve her wartime system of capital control—which, as a matter of fact, had been informally developed during the thirties—in the Borrowing (Control and Guarantees) Act, 1946, 9 & 10 GEO. 6, c. 58, which is administered by the Treasury through the Capital Issues Committee. Pp. 291-92.

But it is something of a commentary on both countries that, whereas the United States, the citadel of capitalism, has strictly regulated the stock exchanges since 1934, sometime Socialist England (perhaps a few people on this side of the ocean would consider her socialist still by American standards) has permitted her exchanges to be a law unto themselves; indeed, she has actually subordinated her prospectus provisions to the exchange regulations in respect of issues quoted or to be quoted on any exchange prescribed by the Board of Trade. Pp. 297-98. Moreover, the Board of Trade does not examine prospectuses as the SEC does. This is not to criticize the British reliance on a more informal and flexible scrutiny by the exchanges and the issuing houses. As Professor Gower points out, the relative freedom of England's company law from stringent regulation reflects her "genius for constitutional government and for operating majority rule without oppression to minorities." P. 430; see also Gower, *Investor Protection in the U.S.A.*, 15 MODERN L. REV. 448 (1952).

13. Corporations have been completely removed from the bankruptcy jurisdiction in England since 1856. P. 43. This, together with the absence of any problems of federalism, permits an integrated statutory treatment of "winding-up," whether for insolvency or other reasons (such as a finding by the court "that it is just and equitable that the company should be wound up"). Companies Act, 1948, 11 & 12 GEO. 6, c. 38, § 222(f). The act also covers "arrangements and reconstructions," though in not nearly so elaborate a manner as cc. X and XI of our Bankruptcy Act. Professor Gower disclaims any attempt "to deal fully with the procedure on a winding up," p. v, but he does devote one chapter each to "Reconstructions" and "Liquidations." Cc. 24-25.

To this extent, at least, the English law seems simpler than the American. On the other hand, an American lawyer is bewildered by the great number of different *kinds* of companies under the British scheme of things. There are "statutory" companies, which are formed by general public acts or occasionally by private acts of Parliament.<sup>14</sup> There are "chartered" companies, which are formed pursuant to "letters patent" granted by the Crown either under the Royal Prerogative or under special statutory powers. And there are "registered" companies, which are formed under the Companies Act much as they would be in Delaware or New York. To be sure, most statutory and chartered companies are non-profit organizations of various species, and the vast majority of ordinary trading companies are organized under the Companies Act as "public" or "private" companies "limited by shares." But a few ordinary commercial concerns are still doing business as statutory or chartered companies. And even under the Companies Act—with its separate recognition of companies limited or unlimited, companies "limited by shares" or "limited by guarantee" (the latter may or may not have a share capital), and companies which are "public" or "private" (the latter of which may or may not have an "exempt" status since the 1947 Act)—the result of the various possible permutations and combinations is no fewer than fifteen types of registered companies!<sup>15</sup>

Furthermore, apart from the Companies Act there are some differences in the common law of corporations between the two countries. For example, the British seem never to have recognized the doctrine of preemptive rights in the strict American sense.<sup>16</sup>

When all this is said, however, the precedents in English and American company law are more interchangeable than most lawyers in either country probably realize. To illustrate this in a context of current importance, Professor Gower says there have been many English cases where shareholders' resolutions have been set aside on the ground that they were passed as a result of a "tricky" circular which the board of directors chose to send with the notice of

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14. The private act will adopt in whole or in part, for the management of the company so created, the provisions of the so-called Companies Clauses Act, 1845-89, and of any other Clauses Act that may be appropriate to the particular type of undertaking. P. 254.

15. Pp. 12-14, 254-58.

16. P. 346. There is, of course, nothing novel about finding variations in the common law of different jurisdictions, or changes in the common law as declared from time to time in a single jurisdiction. An example of both points—and a particularly interesting example in view of our recent open season for proxy battles—is the question whether disgruntled partisans at a stockholders' meeting may "break quorum" by simply "picking up their marbles and going home." When Professor Gower wrote, it appeared to be the English view that, unless the "articles of association" (our by-laws) provided otherwise, a quorum must remain present throughout the meeting, although he pointed to American authority the other way. Pp. 468-69; BALLANTINE, CORPORATIONS § 173 (rev. ed. 1946). More recently there are indications to the contrary in both countries. *In re Hartley Baird, Ltd.*, [1955] 1 Ch. 143; *Textron, Inc. v. American Woolen Co.*, 122 F. Supp. 305, 311-12 (D. Mass. 1954).

meeting.<sup>17</sup> These cases should be helpful in the development of the embryonic American law with respect to the validity of action taken by security holders on the basis of proxies solicited from them in violation of the SEC proxy rules.<sup>18</sup> Again, just a few months ago a Delaware court, in the absence of American precedent, followed a recent decision of the House of Lords to the effect that preferred shareholders had the burden of establishing that the corporate charter entitled them to share *pari passu* in surplus assets after receiving their preference on liquidation, together with a later decision of the English Court of Appeal interpreting the holding of the House of Lords so as to conclude that the preference language of a charter similar to that of the Delaware company was exhaustive.<sup>19</sup>

There is much to be gained from a comparative study of the Anglo-American law of corporations, not only for the academician and the legislative draftsman but also for the lawyer whose first interest must be the writing of a persuasive brief. Professor Gower recognizes this from the British side, with a refreshing number of references to American law.<sup>20</sup> The result is that his book, in addition to making the English precedents more readily available to the American lawyer, not infrequently tells him on what aspects of American law the English cases are apt to be helpful.

Professor Gower has divided his book into five parts, by way of answering the following questions: (I) What is a company and how did it obtain its present shape? (II) What are the consequences of trading as an incorporated company?<sup>21</sup> (III) How is a company formed and floated? (IV) What is the nature of investors' interests in a company—which is to say, what are the dif-

17. Pp. 462-63.

18. See Loss, *op. cit. supra* note 12, at 545-52. The English cases, though written forty or fifty years ago, read as if they were handed down yesterday in the context of the SEC rules.

19. *Mohawk Carpet Mills, Inc. v. Delaware Rayon Co.*, 110 A.2d 305 (Del. Ch. 1954); *Scottish Ins. Corp. v. Wilsons & Clyde Coal Co.*, [1949] 1 All E.R. 1068 (H.L.); *Re Isle of Thanet Elec. Supply Co.*, [1949] 2 All E.R. 1060 (C.A.). In general, see pp. 354-58; Notes, 39 CALIF. L. REV. 568 (1951), 9 WYO. L.J. 77 (1954).

20. An example is his treatment of the American influence on the English law of corporate torts and crimes. P. 146. On the whole, however, British lawyers seem more loath to look to American experience than vice versa. Thus, the report of the Cohen Committee, which preceded the 1947 amendments to the Companies Act, expressed dissatisfaction with the general position of trustees under indentures, but disapproved suggestions that persons with conflicting interests be disqualified from acting as trustees on the ground that "it would not . . . be possible to set forth in legislation all the exemptions which would be desirable to an absolute prohibition." Cmd. 6659, §§ 61-63 (1945). Surely reasonable men could conclude that the elaborate provision on disqualification of trustees in § 310(b) of the Trust Indenture Act of 1939, 53 STAT. 1149, 1158, 15 U.S.C. § 77jjj(b) (1952), is too complicated. But the Cohen report (an admirable document in most respects) did not even recognize the existence of this important American statute which for six years had prescribed precisely what the report regarded as a legislative impossibility.

21. Chapter 9 in this part gives an excellent bird's-eye view of the tax consequences of incorporation. This is an almost indispensable appendage to any book on corporation law—although the British tax collector is less ubiquitous than his American confrere in

ferent types of securities? (V) How are investors and creditors protected? But the author is properly skeptical of all arrangements of the subject matter, including his own. Although his preference for what he terms a "functional rather than a structural approach" has led him to indicate why one should want to form a company before discussing how to do so, he concedes that many will think it preferable to reverse the order of parts II and III. He has also sacrificed logic to convenience by considering prospectuses in part III rather than part V.<sup>22</sup>

Part I contains a forty-page history of company law which is nowhere else available in comparable form—certainly not in the older treatises—and which should be as valuable an essay for the American lawyer as it undoubtedly will be for his English counterpart. As Professor Gower aptly points out, the British system of company law, which has been the model for the entire Commonwealth and Empire in addition to exercising a considerable influence in the United States, has "helped to determine the nature of the economy of the greater part of the English-speaking world."<sup>23</sup> In connection with the struggle for limited liability, which was finally achieved exactly a century ago, the reader is given a choice account of the attendant political manoeuvring, including the pleas from some quarters that the middle and working classes should not be "excluded from fair competition by laws throwing obstacles in the way of men with small capitals."<sup>24</sup> The author detects "more than a slight whiff of Victorian humbug" when he reads "the evidence of Chancery barristers accepting the eager invitation of M.P.'s to persuade them that limited liability was desirable in the interests of the poor."<sup>25</sup> At any rate, the mystic word "Limited" was intended to act "as a red flag warning the public of the dangers which they ran if they had dealings with the dangerous new invention."<sup>26</sup> And for the past

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that he does not attempt to collect a "double tax" on corporate dividends. Pp. 175-80. This aspect of British "socialism" would perhaps be not too distasteful to the N.A.M.

22. P. vi.

23. P. 58 n.34. Leaning substantially on the British reforms of 1947, an Indian Company Law Committee submitted an elaborate report in 1952, as a result of which a Companies Bill was introduced in September 1953 and is expected to become law sometime this year. INDIAN MINISTRY OF FINANCE, DEP'T OF ECON. AFFAIRS, REPORT OF THE COMPANY LAW COMMITTEE (1952), summarized in Vachell, *A New Company Law in India*, 1 BUS. L. REV. 22 (London 1954).

24. P. 44, quoting from the report of the Select Committee of 1850 on Investments for the Savings of the Middle & Working Classes, [1850] 19 B.P.P. 169.

25. Pp. 44-45. If it be a fact that corporations are now developing something "surprisingly like a collective soul," see BERLE, *THE 20TH CENTURY CAPITALIST REVOLUTION* 169, 183 (1954), perhaps these worthies were simply a century ahead of their time.

26. Pp. 48-49. Lord Bramwell is said to have been so proud of the honor of having invented "Limited" that he playfully suggested the word as an inscription on his tombstone. Whether the noble gentleman envisaged the adjective "as a laudatory epitaph or a warning to posterity" is not clear. P. 48 n.62. But it is because of the arbitrary separation of limited liability from incorporation which had prevailed from the first modern Companies Act of 1844 until the Limited Liability Act of 1855 that English companies still bear the label "Ltd." instead of the more logical "Inc." of the United States. Pp. 48-49.

hundred years, especially since the Companies Act of 1900, the trend has been toward greater controls and fuller disclosure rather than the old goal of simple and cheap incorporation.<sup>27</sup> Although the struggle for publicity is by no means over, the signs are multiplying in various parts of the Western world that management is gradually learning it cannot play its cards quite so close to the chest.<sup>28</sup>

All this Professor Gower applauds. He also expresses his convictions forcefully on other controversial topics of the times. The ultra vires doctrine has for him outlived its usefulness.<sup>29</sup> He favors the altogether sensible proposal made by the Gedge Committee last year that no-par shares be legalized—a proposal that may well be foredoomed, for the present at least, by the opposition of the trade unions.<sup>30</sup> And, on the great question of balance of power between management and shareholders, he makes the stimulating suggestion that certain important decisions should be taken only on a postal ballot *after* the shareholders' meeting.<sup>31</sup>

In some of these respects, and others, Professor Gower would probably agree that American ideas of corporation law have advanced beyond the British. But there are a number of British inventions which we might study with profit. Adoption of the concept of the "private company" would do much to reduce

27. Pp. 49-55.

28. The English Act of 1948 for the first time requires the publication of a profit and loss statement; specifies in a new Eighth Schedule the contents of both that statement and the balance sheet, in almost as much detail as the SEC's accounting rules (Reg. S-X); and introduces the requirement, first adopted in the American Securities Act of 1933, of consolidated financial statements ("group accounts" as the English statute calls them) in appropriate circumstances. See c. 20, on "Publicity, Accounts, and Audit."

On the similar accounting reforms in the Swedish Stock Corporation Act of 1944, see Melin, *The New Swedish Companies Act*, 83 J. ACCOUNTANCY 48 (1947). And cf. *Société Aux Galeries Barbès v. Horovitz*, [1954] Dalloz Jurisprudence 244, reported with the *conclusions* of the *avocat général* in [1954] Gaz. Pal. I.166, noted by Ripert, *id.* at I.53, *affirming* [1953] Dalloz Jurisprudence 312, noted by Tunc, *id.* at 314: In a suit by certain shareholders to annul a contract between the corporation and a director, the Paris Court of Appeal held—in a decision which is apparently considered something of a landmark in French corporation law—that the *commissaire au compte* (auditor) had not provided adequate information to the shareholders before their ratification of the contract. In an opinion reminiscent of American *Sumatra Tobacco Corp. v. SEC*, 110 F.2d 117 (D.C. Cir. 1940), where a listed company was denied confidential treatment of the figures on sales and cost of goods sold in the profit and loss statement required by the Securities Exchange Act of 1934, the court rejected the argument of competitive harm from publicity. Although the court's opinion does not refer to the American statute, the *conclusions* of the *avocat général* (a government official whose general advisory functions in civil cases may be roughly analogized to those of the SEC under c. X of the Bankruptcy Act) did refer to the American practice, as discussed by Professor Tunc, *supra*, after posing the rhetorical question whether it was really in the general interest of corporations to enclose themselves "*dans une tour d'ivoire*."

29. C. 5.

30. Pp. 119-20; Cmd. 9112 (1954). The British Government has recently announced its intention to advance the no-par proposal.

31. P. 480. For a discussion of British proxy practices, see pp. 464-67.

the cumbersome and artificial results of our trying to deal with U.S. Steel and the incorporated "hot dog stand" under the same rules.<sup>32</sup> The broad powers of inspection of registered companies given to the Board of Trade—and especially the developing experience with the new section 210, which permits any member to seek judicial relief against oppression—might well be watched as a possible means of preserving the wholesome qualities of the stockholder's derivative action without its "blackmail" propensities.<sup>33</sup> And section 56 of the 1948 act neatly solves the problem of the extent to which capital surplus can be used to pay dividends or repurchase securities by locking it up in a "share premium account" which for most purposes is treated as capital.<sup>34</sup>

Substantive provisions aside, moreover, an American observer cannot help admiring the relatively sophisticated manner in which the British go about their

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32. The articles of a private company must (1) restrict the right to transfer its shares, (2) limit the number of members to fifty, not including employees and former employees who continue to hold its shares, and (3) prohibit any invitation to the public to subscribe to its shares or debentures. Companies Act, 1948, 11 & 12 Geo. 6, c. 38, § 28. Private companies are given various privileges. For example, they need have only two members instead of seven and one director instead of two; they can be formed more simply than public companies; and less publicity is required. The private company was introduced in 1907. The 1947 amendments created "its half-brother, the exempt private company, which has been described in other and less complimentary terms by practitioners endeavouring to understand the obscurer parts of the Seventh Schedule." GORE-BROWNE, HANDBOOK ON THE FORMATION, MANAGEMENT AND WINDING UP OF JOINT STOCK COMPANIES, at v (41st ed. 1952). At any rate, exempt private companies approach even more nearly the "incorporated partnership." Pp. 198-99, 256-58; see also Gower, *The English Private Company*, 18 LAW & CONTEMP. PROB. 535 (1953).

The private company concept has also spread to other parts of the Commonwealth. See GANTA, SURI & IYER, LAW AND PRACTICE OF PRIVATE LIMITED COMPANIES (India, 2d ed. 1953); MASTEN & FRASER, COMPANY LAW OF CANADA 13-14 (4th ed. 1941); ROSS, GUIDE TO THE COMPANIES ACTS OF THE AUSTRALIAN STATES AND NEW ZEALAND 69-74 (1936); cf. Treillard, *The Close Corporation in French and Continental Law*, 18 LAW & CONTEMP. PROB. 546 (1953). In fact, as I have elsewhere pointed out, the private-public dichotomy is essentially the philosophy of the Frear Bill of 1950, recently revived in slightly modified form by Senator Fulbright, which would amend the Securities Exchange Act of 1934 so as to subject to the registration, reporting, proxy and insider-trading provisions all interstate companies of a certain size and with a certain number of security holders. LOSS, SECURITIES REGULATION 622 n.552 (1951 and 1955 Supp.).

As a corollary of the private company concept, the Companies Act prohibits any partnership or other kind of unincorporated association (presumably including a common-law business trust) with more than twenty persons. P. 5. And, as might be expected, the *limited* partnership has never loomed so large as in the United States. New York and Connecticut passed limited partnership statutes on the French model as early as 1822 and Pennsylvania in 1836. CRANE, PARTNERSHIP § 26 (1952). But the English Limited Partnerships Act was not passed until 1907. Pp. 50-51. One wonders whether the American states might not have developed the more flexible private corporation if they had not moved so early on the limited partnership front.

33. Pp. 511-18.

34. P. 106. On the complexities of this aspect of corporation law in the United States, see DODD & BAKER, CASES AND MATERIALS ON CORPORATIONS 1118-57 (1951).



periodic reforms of company law. Every twenty years or so the Board of Trade appoints a distinguished committee of experts to hold hearings and submit a report. It would be naive to assume a complete absence of political considerations. Yet the Cohen Committee's recommendations of 1945 were passed with few changes under the sponsorship of the Labor Government of 1947 notwithstanding that the committee had been appointed under the earlier Churchill regime. With us, by contrast, it seems next to impossible to push through major legislation like the SEC statutes except in times of crisis. And one who ventures the suggestion that a free stock market can go down as well as up is apt to be charged in some quarters with pulling down the pillars of the Republic.

It will have become apparent by now that I view the publication of Professor Gower's book as a significant event in legal literature. I do think the American reader should be warned about differences in terminology. The quip to the effect that England and America are divided by a common language becomes doubly true in the context of financial jargon. English lawyers speak of "shares," not stock,<sup>35</sup> and "debentures" or "debenture stock" instead of bonds.<sup>36</sup> Our articles of incorporation and by-laws are to them the "memorandum of association" and "articles of association." Stock dividends are generally called "bonus shares" (not to be confused with the American use of this expression), although attempts have been made to popularize the term "ploughshares," which is logical enough in view of the fact that undistributed profits are thus permanently ploughed back.<sup>37</sup> Paid-in or capital surplus goes into a "share premium account," as we have seen. Earned surplus is, with less precision, called simply a "reserve."<sup>38</sup> And, as if it were not confusing enough to have to add columns of pounds, shillings and pence, the English complement their habit of driving on the wrong side of the road by showing their assets on the right of the balance sheet and their liabilities on the left.

For all this, of course, the author is not to blame. If an American law office can afford one book on English company law, this is it.

LOUIS LOSS†

THE RIGHT TO COUNSEL IN AMERICAN COURTS. By William M. Beaney. Ann Arbor: University of Michigan Press, 1955. Pp. xi, 268. \$4.50.

PROFESSOR William M. Beaney of the Department of Politics of Princeton undertook this study in "an attempt to learn whether the right to counsel, which is vital in criminal cases, is enjoyed as consistently and widely in the

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35. "Shares" may be converted into "stock," which theoretically is freely divisible into fractions of any amount, but the difference is now largely esoteric. Pp. 371-73.

36. Pp. 343-44.

37. P. 108.

38. Pp. 106-07.

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